IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5140 of 1993

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANSING FATEHSING MAHIDA

Versus

DIVISIONAL CONTROLLER

Appearance:

NOTICE SERVED for Petitioner No. 1

MR MITUL K SHELAT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 29/07/2004

ORAL JUDGEMENT

1. In this petition the petitioner has challenged the judgement and award passed by the Industrial Tribunal in Reference (IT) No.279/90 dated 19.11.1992 whereby the Tribunal has rejected the reference.

2. The petitioner was working as Driver in the Baroda Division of the respondent Corporation. When he was working at Dabhoi Depot, while on the route of Dabhaoi-Palitana on 12.4.1986 an accident took place in Anand City. In pursuance of the said incident a departmental inquiry was conducted against him and and ultimately a penalty of stoppage of five increments with cumulative effect was imposed upon the petitioner. The departmental appeal filed against the said punishment was dismissed. The petitioner, therefore, raised an industrial dispute which was referred to the Industrial Tribunal and numbered as Reference (IT) No.279/90 before the Industrial Tribunal,Baroda. After hearing the parties, the Industrial Tribunal rejected the reference. It is against the said decision the present petition has been filed.

3. Heard the learned counsel for the respective parties and carefully perused the impugned judgement and award.

4. Learned counsel for the petitioner submitted that the Tribunal ought to have considered that whether the punishment imposed by the Competent Authority is just and reasonable. He further submitted that the Tribunal has committed an error in relying upon the evidence that the scooterist was dragged upto 35 ft. He submitted that in any case, the stoppage of five increments with permanent effect is too harsh.

5. The Tribunal has elaborately discussed the evidence on record in its judgement. The Tribunal has relied upon the evidence that after the accident the scooterist fell down and he was dragged with the bus utpo 35 ft. and that too on wrong side. The Tribunal has also recorded a finding of fact that the petitioner was driving the bus in an excessive speed and he was negligent and careless in his duty. After appreciating the evidence on record the Tribunal has come to the conclusion that the charge levelled against the petitioner was proved. Therefore, the Tribunal has rejected the reference of the petitioner. Looking to the conduct of the petitioner as narrated in the judgement of the Tribunal, it cannot be said that the punishment imposed upon him is too harsh and disproportionate to the negligence alleged and proved agaisnt him. Therefore, looking to the facts and circumstances of the case, I am satisfied that the impugned judgement and award does not merit any interference in this petition.

6. In the result, the petition is rejected. Rule is

discharged with no order as to costs.

[K.S. JHAVERI, J.]
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